

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

FUSION ELITE ALL STARS et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC et al.,

Defendants.

Civ. Action No. 2:20-cv-2600

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants hereby provide the Court with notice of yesterday's decisions of the United States District Court for the District of Columbia in *New York v. Facebook, Inc.*, No. 20-cv-03589 (D.D.C. June 28, 2021). In *Facebook*, the plaintiffs sought to allege a violation of Section 2 of the Sherman Act based on acquisitions and other conduct. The Court dismissed the case in its entirety under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

As to the acquisitions, the Court held that the doctrine of laches barred claims based on acquisitions made more than four years before the case was filed because such claims would likewise be barred under the statute of limitations. *Id.* (slip op. at 43). The Court also held that conduct that is not anticompetitive as a matter of law cannot provide the basis for a claim under Section 2 when combined with such out-of-period acquisitions on a "course of conduct" or "monopoly broth" theory. *Id.* (slip op. at 61-62).

In short, the Court rejected the very arguments on which Plaintiffs primarily rely (*see* ECF 91 at 16-19) and dismissed the case in its entirety, as should happen here.

Dated: June 29, 2021

Respectfully submitted,

s/ Matthew S. Mulqueen

George S. Cary*
Alexis Collins*
Steven J. Kaiser*
CLEARY GOTTlieb STEEN & HAMILTON
LLP
2112 Pennsylvania Avenue, NW
Washington, DC 20037
Phone: (202) 974-1500
Fax: (202) 974-1999
gcary@cgsh.com
alcollins@cgsh.com
skaiser@cgsh.com

* Admitted *pro hac vice*

Matthew S. Mulqueen (TN #28418)
Adam S. Baldrige (TN #23488)
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ
165 Madison Avenue, Suite 2000
Memphis, TN 38103
Phone: (901) 526-2000
Fax: (901) 577-0866
mmulqueen@bakerdonelson.com
abaldrige@bakerdonelson.com

*Attorneys for Defendants Varsity Brands, LLC,
Varsity Spirit, LLC, and Varsity Spirit
Fashions & Supplies, LLC*

By: s/ Nicole D. Berkowitz

Grady Garrison (TN #008097)
Nicole D. Berkowitz (TN #35046)
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ
165 Madison Avenue, Suite 2000
Memphis, TN 38103
Phone: (901) 526-2000
Fax: (901) 577-0866
ggarrison@bakerdonelson.com

nberkowitz@bakerdonelson.com

Attorneys for U.S. All Star Federation, Inc.